



REPUBLIC OF KENYA



KENYA LAW
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**London Distillers v Sea Bound (Civil Application E265 of 2022)
[2022] KECA 1021 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KECA 1021 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E265 OF 2022
DK MUSINGA, JA
SEPTEMBER 23, 2022**

BETWEEN

LONDON DISTILLERS (K) LIMITED APPLICANT

AND

SEE BOUND LIMITED RESPONDENT

*(Being an application for extension of time to file a notice and record
of appeal against the Judgment of the High Court of Kenya at Nairobi
(Kimaru, J.) dated 30th May 2008 in H.C.C.C No. 184 of 2001)*

RULING

1. The application seeks grant of leave to the applicant to file a notice and record of appeal against the decision of the High Court dated May 30, 2008 out of time.
2. From the affidavit in support of the application, it is evident that immediately after delivery of the impugned judgment the applicant instructed its advocate to institute an appeal and a notice of appeal dated May 30, 2008 was filed on June 3, 2008. Thereafter, the applicant's advocates wrote to the High Court's Deputy Registrar several letters requesting for certified copies of the proceedings to enable them prepare and file a record of appeal without any positive response. It is evident that the court file could not be traced for quite some time. However, on 12th September 2014 the applicant's advocate forwarded to the Deputy Registrar copies of the proceedings that were photocopied from the respondent's application dated July 17, 2013 and requested for their certification. However, the Deputy Registrar did not do so because some of the pages of the proceedings were missing.
3. The file was subsequently traced and vide a ruling dated March 13, 2019, the Deputy Registrar directed the applicant's advocates to collect the certified copies of the proceedings upon payment of the requisite charges. When the applicant's advocate went to pick the proceedings, again the court file could not be traced.



4. Pursuant to an application by the respondent, on March 18, 2022 this Court struck out the notice of appeal that had been filed way back on June 3, 2008 on grounds that no record of appeal had been filed. The applicant has not clarified whether it has now obtained the proceedings and prepared the record of appeal.
5. The respondent did not file any replying affidavit or submissions, despite service of a hearing notice on Wednesday September 7th 2022 at 3.10 p.m. by way of an email.
6. The principles that guide this Court in its consideration of applications for extension of time are well settled. In *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi* [1999] 2 EA 231, the Court held: -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time, are first, the length of the delay, secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and fourthly, the degree of prejudice to the respondent if the application is granted.”
7. The length of the delay is quite inordinate, almost 14 years. However, in my view, it has been well explained. It appears to me that there has been a deliberate effort by someone at the High Court Civil Registry to hide the court file. Shortly after the Deputy Registrar delivered her well-considered ruling on March 13, 2019 which signaled the end of the long “disappearance” of the court file, the file went missing again.
8. In *Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet* [2018] eKLR, this Court held:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
9. The applicant believes that the intended appeal has good chances of success; states that it will be heavily prejudiced if the orders sought are not granted; whereas no prejudice will be suffered by the respondent if the order of extension of time to file the notice of appeal is allowed.
10. I am satisfied that the applicant’s application is merited and hereby allow it. The applicant should file and serve the notice and record of appeal within fourteen (14) days from the date of delivery of this ruling. Since the respondent did not file any response, I make no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2022.

D. K. MUSINGA, (P)

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

